

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

76-4232

United States Court of Appeals

For the Second Circuit

WILLIAM M. IVLER and BARBARA IVLER,
Plaintiffs-Appellants,

against

COMMISSIONER OF INTERNAL REVENUE,
Defendant-Appellee.

On Appeal from the United States Tax Court

PLAINTIFFS-APPELLANTS' BRIEF

Melvyn I. Weiss, Esq.
MILBERG & WEISS
*Attorneys for Plaintiffs-
Appellants*
One Pennsylvania Plaza
New York, New York 10001
(212) 594-5300

William M. Ivler, Esq.
*Attorney for Plaintiffs-
Appellants*
300 Broad Street
Stamford, Connecticut 06901
(203) 324-3111

Gilbert E. Andrews, Esq.
*Attorney for Defendant-
Appellee*
U.S. Department of Justice
Washington, D.C. 20530

Mead Whitaker, Esq.
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224



B
P/S

T A B L E O F C O N T E N T S

	<u>Page</u>
Table of Contents.....	i
Table of Cases.....	ii
Preliminary Statement.....	1
Statement of Issues Presented	
For Review.....	1
Statement of the Case.....	1
Statement of Facts.....	2
Argument.....	6
Conclusion.....	16

T A B L E O F C A S E S

	<u>Page</u>
<u>Commission v. Ferrer</u> , 304 F. 2d 125 (2d. Cir, 1962), revg. in part 35 T.C. 617 (1961).....	9
<u>Dorman v. United States</u> , 296 F. 2d 27 (C.A. 9, 1961).....	12
<u>Jack E. Golsen</u> , 54 T.C. 742 (1970), affd. 445 F. 2d 985 (10th Cir. 1971), cert. denied 404 U.S. 940 (1971).....	9
<u>Turzillo v. C.I.R.</u> , 346 F. 2d 884 (6th Cir., 1965).....	10

PRELIMINARY STATEMENT

The decision appealed from was rendered by Judge William M. Fay of the United States Tax Court.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Tax Court err in holding that the payments William M. Ivler ("Ivler") received in 1966 and 1967 for the release of his rights to receive stock of Gevyn Construction Corp., which stock had a zero base when he received such rights in 1963, constitute ordinary income, rather than income from a long-term sale or exchange of a capital asset?

2. Did the Tax Court err in holding that such rights acquired by Ivler in 1963 were rights to obtain income from refraining from his law practice, rather than rights to acquire an interest in property which, if itself held, would have been a capital asset?

STATEMENT OF THE CASE

William M. Ivler and Barbara Ivler are the Petitioners-Appellants herein. The controversy involves the receipt of monies by Ivler from Gevyn Construction Corp. ("Gevyn") in the years 1966 and 1967.

Ivler, together with his wife, filed income tax returns for the years 1966 and 1967, indicating income and long-term capital gains (Exhibits 1-A and 2-B), specifically setting forth in a handwritten statement attached as Schedule D to Exhibit 1-A (Exhibit 1-A; Pages 10-14) the monies he had received from Gevyn as income and capital gains in 1966 and projected the tax consequences and payments thereon, not only for 1966, but also for the payments to be received during 1967.

The Commissioner disallowed the capital gain treatment and claimed delinquencies of \$26,625.57 and \$29, 677.44 for 1966 and 1967, respectively.

The United States Tax Court, after trial, found deficiencies in the 1966 and 1967 Federal Income Tax returns as claimed by the Commissioner.

STATEMENT OF THE FACTS

As agreed in Stipulation No. 1, ^{1/} Ivler was admitted to practice law in the State of New York in 1947, had practiced law in the City and State of New York continuously from 1947 to July, 1963, and in July, 1963, was a member of the law firm of Galef and Jacobs (Appendix, Page 127-a; Stip. 1, ¶3, 4 and 5).

Commencing in approximately 1960 and until July, 1963, Gevyn was a law client of Ivler (Appendix, Page 127-a; Stip. 1, ¶6). In 1961, Ivler became Vice President of Gevyn while continuing his practice of law (Appendix, Page 27-a; T.p. 26). ^{2/} On the July 4th weekend, 1963, George and Evelyn Ungar (the sole stockholders of Gevyn) invited Ivler and his wife, as their guests, to Las Vegas, Nevada (Appendix, Page 30-a; T.p. 29). While there, the Ungars suggested that Ivler join Gevyn in exchange for a salary comparable to his then earnings as an attorney, together with receiving a one-third interest in Gevyn (less the then agreed to "net worth" of Gevyn of \$270,000.00). (Appendix, Pages 31-a and 32-a, 112-a and 113-a; T.p. 30-31, 110-111). Ivler accepted the offer (Appendix, Pages 30-a to 35-a; T.p. 29-34). Shortly upon the Ivlers'

1/ All references to Stipulation No. 1 shall be Stip. 1, ¶.

2/ References to the trial transcript shall be T.p.

and the Ungars' return from Las Vegas, this oral agreement was modified by the parties whereby it was agreed that Ivler's aforesaid stock interest would vest in two increments: one-half thereof (i.e., one-sixth of Gevyn's stock) upon the expiration of two years of employment of Ivler by Gevyn (i.e., June, 1965) and the balance of the one-third interest at the end of five years of Ivler's said full time employment (Appendix, Pages 37-a to 38-a; T.p. 36-37).

Ivler thereupon left his practice of law and became a full time Vice President of Gevyn, devoting all his energies, other than completing specific existing litigation appeals, to the business affairs of Gevyn (Appendix, Pages 38-a to 40-a; T.p. 37-39).

Upon the expiration of the two year period in June, 1965, Ivler sought from the Ungars the issuance and physical possession of the shares of stock that had been agreed upon in 1963. The Ungars, at that time recognized that Ivler had a vested property right in one-third of Gevyn's stock (Exhibit 7-G), but sought, with Ivler, tax counsel's advice to effectuate the 1963 agreement and to have issued to Ivler his shares of Gevyn (Appendix, Pages 41-a to 42-a; T.p. 40-41).

While the issuance of Ivler's stock still remained unresolved and while Ivler was out of the country on vacation, the Ungars, in November and December, 1965, withdrew over \$260,000.00 from Gevyn (Exhibit 8-H); (Appendix, Pages 49-a to 51-a; T.p. 49-51; 119-121), had Gevyn purchase real property, knowing that Ivler had not consented thereto (Appendix, Pages 47-a to 49-a; T.p. 47-49) and advised Ivler

that they were changing the previous understanding with Ivler as to the manner the parties would invest in outside business ventures, all indicating a substantial change to Ivler of his business relationship with the Ungars (Appendix, Pages 47-a to 51-a; T.p. 47-51).

In January, 1966, when Ivler felt that the attempt to have his stock of Gevyn issued to him pursuant to the Ungars' and Ivler's 1963 oral agreement was fruitless, Ivler requested the Ungars to purchase his said interest (Appendix, Pages 52-a to 53-a; T.p. 52-53). George Ungar then offered Ivler \$75,000.00 for said interest (Appendix, Page 53-a; T.p. 53), even though (a) Ivler's interest had been evaluated by Gevyn's tax counsel, based upon Evelyn Ungar's figures and projections as being in excess of \$364,000.00 after the payment of all taxes on the transaction and the deduction of the aforesaid \$270,000.00 (Exhibit 9-I; Appendix, Page 53-a; T.p. 53), and (b) George Ungar had, in the latter part of 1965, estimated that Gevyn's work in progress had an estimated profit before taxes in excess of \$2,000,000.00 (Exhibit 10(1), (2) and (3); Appendix, Page 53-a; T.p. 53).

On February 14, 1966, the last day for Gevyn to file its income tax return for the fiscal year ended November 30, 1965, the Ungars offered Ivler the sum of \$300,000.00 in satisfaction of Ivler's right to Gevyn stock (Appendix, Pages 53-a to 54-a; T.p. 53-54). However, the Ungars demanded that Ivler execute a document "dated as of the 30th day of November, 1965" (Exhibit 3-C) prepared and typed by

Evelyn Ungar February 14, 1966, wherein Gevyn would immediately pay Ivler \$160,000.00 designated as a "bonus" and \$100,000.00 per annum as "salary" (approximately \$70,000.00 more per year than had been paid to Ivler for the two previous years) for two years commencing from the previous December 1, 1965 (Appendix, Page 54-a , T.p. 54).

Ivler, having surrendered his law practice, having no immediate ability to continue his earnings at the rate which he had been receiving before and after joining Gevyn and believing that unless he agreed to accept the payment in the manner proffered, he would be dismissed and left to attempt to enforce his contractual rights in a long and uncertain law suit, signed said document. He then received a check that date for \$160,000.00 and commenced receiving \$100,000.00 per annum retroactive to December 1, 1965, which payments continued to November 30, 1967 (Exhibit 3-C).

Ivler, however, in April, 1967, after advising George Ungar of his intention, filed the Ivlers' 1966 income tax return (Appendix, Pages 71-a and 72-a ; T.p. 70-71 ; Exhibit 1-A), specifically setting forth in a handwritten statement attached to Schedule D, the full transaction. Ivler declared the monies received as income and capital gains and projected the tax consequences and payments thereon, not only for 1966, but also for the payments to be received during 1967, as follows:

Received In	For Salary	For Pur. (Cap. Gain)	Total
1965	\$ 1,500.00		\$ 1,500.00
1966 (for 1965)	1,000.00	\$ 5,833.33	6,833.33
1966	30,000.00	230,000.00	260,000.00
1967 (11 months)	27,500.00	64,166.67	91,666.67
Totals	\$60,000.00	\$300,000.00	\$360,000.00

The Commissioner contended that the sum of \$235,833.33 received in 1966 and the sum of \$64,167.00 received in 1967, were income constituting salary and bonus, because they were so designated in Exhibit 3-C (Exhibit 3-C, Page 2). Ivler contended that the payment was for the release of Ivler's right to have Gevyn's stock issued to him and therefore the capital gains treatment reported by the Ivlers was correct.

The trial testimony consisted only of Ivler's and Evelyn Ungar's testimony, which will be further discussed in the argument hereinafter presented.

ARGUMENT

IVLER'S RIGHT TO ACQUIRE AN EQUITY INTEREST IN GEVYN WAS TO AFFORD IVLER AN OPPORTUNITY TO ACQUIRE AN INTEREST IN PROPERTY, WHICH IF ITSELF HELD, WOULD BE A CAPITAL ASSET, AND NOT IN PAYMENT FOR HIS REFRAINING FROM LABOR.

The Trial Court, in its Findings of Fact, found (Appendix, Page 15-a):

It was agreed that William's salary be fixed at \$30,000.00 annually and that he acquire one-third of the stock of Gevyn outstanding.

This finding was amply supported by the trial record (Appendix, Pages 30-a to 36-a, 37-a to 38-a; T.p. 29-35, 36-37, 101; Exhibit 7-G and 9-I).

However, the trial Court, in its Opinion, after so finding, stated at Page 5 thereof (Appendix, Page 17-a):

The record compiled herein hardly elucidates the terms of the agreement pursuant to which William acquired those rights, ...

It is respectfully submitted that said statement, forming the basis of the Tax Court's conclusion, is inconsistent with the Tax Court's aforesaid finding and the full record.

The Tax Court found there was an agreement:

- (a) that Ivler was to receive a salary of \$30,000.00, and
- (b) that Ivler was to acquire one-third of the stock of Gevyn.

What terms were not "elucidated"?

The time of issuance of Ivler's shares of stock was agreed upon in 1963, one-sixth after two years and one-sixth after five years, (Appendix, Pages 36-a to 37-a, 103-a, 110-a; T.p. 36-37, 101, 108), the amount of shares of stock was agreed upon, and the fact that the net worth of \$270,000.00 of Gevyn existing in July, 1963, would not be included in the assets represented by the one-third share to be issued to Ivler was agreed upon (Appendix, Pages 32-a to 33-a, 112-a to 115-a; T.p. 31-32, 110-113).

The testimony, though reluctantly given by Evelyn Ungar, completely substantiates and supports both Ivler's testimony and contentions and the Tax Court's finding of the agreement and the right of Ivler to receive the shares of stock and is totally inconsistent with the Tax

Court's holding that the right to acquire the stock was consideration for refraining from the practice of law.

The evidence is uncontradicted that in July, 1963, the Ungars sought out Ivler as an employee and a principal in Gevyn, made an oral agreement with Ivler to have him become employed full time for Gevyn and to receive a salary of \$30,000.00 a year and the right to receive one-third of the outstanding shares of Gevyn, one-sixth at the end of two years and the second one-sixth at the end of five years. Ivler had, since 1961, been a Vice President of Gevyn and in 1963, George and Evelyn Ungar were desirous of having Ivler join them as a full time associate in a rapidly growing business (Appendix, Page 31-a , T.p. 30).

Exhibit 7-G (Exhibit 7-G), a memorandum written in July, 1965, by Evelyn Ungar, the Secretary-Treasurer of Gevyn and one of the two stockholders of Gevyn, substantiates both Ivler's testimony and the contents of the original oral agreement. Throughout Evelyn Ungar's "Urgent" memo to Ivler, there appeared phrase after phrase which can have no other meaning than that both the Ungars and Ivler recognized that Ivler was an important and integral part of, not only Gevyn, but the Ungars' business and personal life and that for those reasons, he had the right, in June, 1965, to have issued to him one-sixth of Gevyn's outstanding shares of stock.

Paragraph 2 thereof refers to

... the inadvisability of transferring the whole 1/3 now ...

... I reminded him that our Wills left you 1/3 right now and that on the redraw of the Wills, we would again leave you 1/6 (1/6 being yours after this agreement is executed) ...

... Thus, it is up to you whether you want to live with us another 3 years on our word that you are getting another 1/6 at the end of the 5th year and on our further word, that our Wills, once drawn, will not be altered during the intervening years.

The whole tenor of the Exhibit can leave no question that Ivler's contentions as to the purpose of the agreement made in July, 1963, were accurate and correct and that though the Tax Court was correct in its finding that an agreement did exist in 1963 creating in Ivler a right to receive Gevyn stock, it was incorrect for the Tax Court to conclude that this right was created for the "refraining from labor".

The Tax Court stated that Ivler's contention

... that the \$300,000.00 was paid, not as compensation for services, but in consideration of William's having released rights to an equity interest in Gevyn ... depends upon how William acquired the rights he is purported to have released.

(Appendix, Page 16-a, Opinion, Page 5)

Citing Commission v. Ferrer, 304 F. 2d 125 (2d Cir. 1962), revg. in part 35 T.C. 617 (1961) and Jack E. Golsen, 54 T.C. 742 (1970), affd. 445 F. 2d 985 (10th Cir. 1971), Cert denied 404 U.S. 940 (1971).

An examination of the Ferrer and Golsen opinions immediately reveal that in both cases, a "gimmick" or a plan of avoidance in the creation of the original agreement by the taxpayers with third persons was devised in order to avoid the tax consequences of the true transaction (in Ferrer the Court refers in quotation marks to a "lease", in Golsen, it was a "loan"). Such a factual situation does not exist in the instant case. In fact, the antithesis is revealed by an examination of the relationship between the parties to the agreement. Ivler acquired his rights to the property he later released in an arm's length transaction totally unrelated to the tax consequences.

Though the Tax Court sought to equate the facts in the instant case to the cases wherein consideration was received for the giving of a covenant not to compete ("giving up the practice of law", "refraining from labor"), the agreement was in reality and fact analogous to the facts and holding in Turzillo v. C.I.R., 346 F 2d 884 (6th Cir., 1965).

In rejecting the Commissioner's contention therein that "although a contract right is a property right, it is not the law that any property right, is automatically a capital asset", the Court, at 346 F. 2d p. 889, held:

In line with the above rulings (Dorman v. U.S., 296 F 2d 27, 29-30, C.A. 9th; C.I.R. v. Ferrer, 304 F. 2d 125 (C.A. 2nd) and others cited therein) we are of the opinion that the rights acquired by Turzillo through the execution of the five contracts ... were property rights, the essential nature of which was not merely to obtain periodic receipts of income for services

rendered, but to afford Turzillo an opportunity to acquire an interest in property, which if itself held, would be a capital asset. (Underlining added)

As in Turzillo, there was "economic substance" to the agreement reached in the acquisition of the property right and not, as in Golsen and Ferrer, an attempt to characterize a transaction for the purposes of evading tax consequences.

In Turzillo, there were five contracts, all entered into at the time the taxpayer received his right to have shares issued. One of the contracts gave the taxpayer options, under certain conditions, to purchase other shares of stock of the employer corporation, another of the contracts was for the employment of the taxpayer.

Subsequent to the execution of the contracts and after the taxpayer had been employed for a period of time, the taxpayer's employment was terminated and the taxpayer instituted litigation against the employer-corporation alleging four causes of action: (1) that the termination of the taxpayer's employment contract made it impossible for the taxpayer to exercise his options to become a one-half owner of the employer-corporation, (2) for an accounting in respect to a percentage of profits to be paid under the employment contract to the taxpayer, (3) an injunction concerning taxpayer's present employment after termination, and (4) an injunction restraining the exercise of options against the taxpayer's stock holdings in another class of stock.

Following negotiations, the litigation was settled and a release "from any and all claims of every kind and character whatsoever"

was executed by the taxpayer to the employer-corporation in exchange for the payment of \$11,233.36 for the purchase of the other class of stock and \$95,000.00 in settlement of all of the taxpayer's claims to continued employment.

The taxpayer (with adjustments) filed his return and reported both sums as a long-term gain from the sale or exchange of capital assets.

In Turzillo, the taxpayer's right to acquire stock of the employer-corporation came at a time when, as a Vice President and employee of the corporation, a reorganization took place at which time the employment contract, as well as the other contracts, were entered into. In the instant case, Ivler's right to acquire the Gevyn stock arose at the making of the agreement in 1963 (i.e., when the employment agreement was entered into) and had "economic substance" and purpose other than avoidance or evasion of the payment of taxes (as in Golsen and Ferrer), i.e., to induce Ivler to join the Ungars and Gevyn and to enhance the future worth of the business.

In Dorman v. United States, 296 F.2d 27 (C.A. 9, 1961), Judge Barnes stated at pages 29 and 30:

But we cannot agree with the trial court that appellant's only status with respect to the partnership was that of an employee who was paid separation pay. Before the dissolution of the partnership, appellant (taxpayer) had in addition to his salaried position a contractual right to acquire an interest in the partnership and to receive a share of the partnership profits (Conclusion of Law No. 7, R. p., 31). In

other words, he had an interest in an executory contract. In reality, it was this executory contract which (the other partner) bought from (the taxpayer) for \$12,470, and it is clear that an executory contract is a capital asset. Levensen v. United States, N.D. Ala. 1957 157 F. Supp. 244, 249; Commissioner v. Goff, 3 Cir. 1954, 212 F. 2d 875, cert.denied, 348 U.S. 829, 75 S. Ct. 52, 99 L. Ed. 654.) (Underlining added.)

Why was the agreement made in Dorman? Not because the taxpayer was to receive additional compensation (ordinary income) for his services, but because he was joining a business venture, not merely to provide the taxpayer with income, but an opportunity to share in the business growth.

As Judge Barnes continued at pages 29-30:

... Taxpayer had something more extensive than a mere employment contract. A right to acquire, in the future, "a fully paid vested interest" is surely akin to the situation where one who has a capital interest, rather than to one where there is mere employment, where the employee has no right, present or future, to acquire such capital interest. This right, or "option", to acquire a capital interest represents more than a possibility of receiving ordinary income in the future.

It is submitted that the Tax Court below erred in its conclusion and in its analogy of the instant facts to an agreement not to compete. To reach that conclusion, the Tax Court must have found by implication that in 1963 Gevyn and the Ungars agreed to compensate Ivler by giving him the right to acquire one-sixth of the stock of Gevyn in two years and one-sixth of the stock of Gevyn in five years

solely for Ivler "refraining from the practice of law".

This conclusion, however, is not borne out by the exhibits in evidence.

Exhibit 6-F prepared in September, 1963, reflects the intentions of Ivler and the Ungars on the specific question of what was the property right that Ivler released -- a capital investment or merely ordinary income?

The third "WHEREAS" clause therein (Exhibit 6-F; Page 1) states:

WHEREAS, it is the desire of the parties hereto that Ivler be employed by the Corporation and that he be an owner and holder of shares of stock of the Corporations; ...

This statement of intent is further found in paragraph 3 of Exhibit 6-F (Exhibit 6-F; Pages 2 and 3) where the proposed agreement provided for the immediate issuance of the certificates of stock to Ivler and the escrowing of said certificates for the two and five year periods.

Paragraph 5(c) (Exhibit 6-F; Page 6) in treating the involuntary termination of Ivler's employment after the two year period, provided for the repurchase of Ivler's "16-2/3% of the shares of" Gevyn stock

... for the purchase price of \$300,000.00, less the sum actually drawn by Ivler from July 1, 1963, to June 30, 1965, or twice the actual book value of said shares of stock (as computed by the regular accountants of the Corporations pursuant to the same procedures as set forth in paragraph "4(d)" hereof) whichever is higher.

When Ivler and the Ungars agreed in February, 1966 that Ivler was to release his rights to acquire the ownership of one-third of Gevyn's stock, both Ivler and Ungar had in their possession (a) Barr's Memorandum (Exhibit 9-I) which "explores certain aspects of the agreement under which Bill Ivler is to acquire a one-third interest in Gevyn" and which indicates that the minimum value of Ivler's shares as of the end of the two year period was \$364,479.00 after all income and capital gains taxes would be paid on the transaction (Exhibit 9-I; Page 16), and (b) George Ungar's projection of Gevyn's gross profits of approximately \$2,000,000.00 before taxes and overhead for Gevyn's three remaining construction projects (Exhibits 10(1)(2) and (3)).

The 1966 negotiations between Ivler and the Ungars that resulted in Ivler's receiving \$300,000.00 was not for a "bonus" and "salary" (Exhibit 3-C; Page 2), but as stated in Exhibit 6-F, for the purchase of Ivler's right to "16-2/3% of the shares of stock of" Gevyn (Exhibit 6-F; Page 7).

As in Turzillo and Dorman, at the time of the making of the agreement in July, 1963, it was Ivler's and the Ungars' desire to afford Ivler "an opportunity to acquire an interest "in Gevyn as an inducement to be a part of the growth of a business. Since it was contemplated between Ivler and the Ungars that the net value of the Ungars' earned interest in Gevyn was \$270,000.00 which was not to be reflected in Ivler's stock interest (Exhibit 6-F; Page 1, second

"WHEREAS" clause; Exhibit 5-E; Page 6, paragraph A. 1; Exhibit 8-H; Page 1, paragraph 2 and Page 3; Exhibit 9-I; Page 11, paragraph A; Appendix, Page 112-a), it is clear and implicit that the purpose for the creation of Ivler's right to acquire Gevyn's stock was to furnish Ivler, not with ordinary income, but the right to acquire a capital asset.

Ivler "gave up his law practice" (Exhibit 1-A; Page 10), he did not "refrain from the practice of law". Ivler was not given the right to acquire Gevyn's stock as a result of refraining from earning income (since his income was to approximate his income from his legal practice), but so that he would have a capital interest starting with a zero value in 1963, which would, hopefully, increase as a result of his and others' efforts and the success and growth of the business.

CONCLUSION

Plaintiffs-Appellants submit that the testimony and exhibits support their contention that the sum of \$300,000.00 paid to Ivler by a \$160,000.00 "bonus" and additional "salary" of \$140,000.00 were, in fact, a payment for the release of Ivler's right to acquire shares of Gevyn's stock, an interest in property "which if itself held, would be a capital asset".

Plaintiffs-Appellants request the reversal of the decision of the United States Tax Court and the granting of Plaintiffs- Appellants' Petition to determine that the Commissioner's Notice of Deficiencies is incorrect and should be vacated, declared null and void and that no

further income taxes are due and owing from the Plaintiffs-Appellants.

Respectfully submitted,

Melvyn I. Weiss, Esq.
MILBERG & WEISS
Attorneys for Plaintiffs-
Appellants
One Pennsylvania Plaza
New York, New York 10001
(212) 594-5300

William M. Ivler, Esq.
Attorney for Plaintiffs-
Appellants
300 Broad Street
Stamford, Connecticut 06901
(203) 324-3111

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WILLIAM M. IVLER and BARBARA IVLER,

Plaintiffs-Appellants

NO. 76-4232

-against-

COMMISSIONER OF INTERNAL REVENUE,

Defendant-Appellee

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF CONNECTICUT)

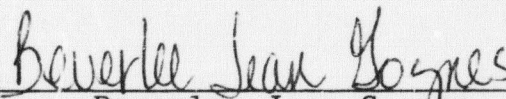
COUNTY OF FAIRFIELD)

SS:

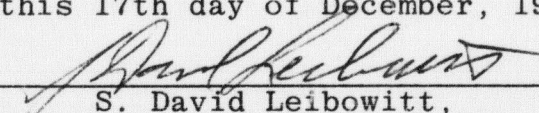
Stamford, December 17, 1976.

BEVERLEE JEAN GOYNES, being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age and
resides at 28 Center Terrace, Stamford, Connecticut 06906.

On December 17, 1976, deponent served the within Plaintiffs-
Appellants' Brief upon Gilbert E. Andrews, Esq. and Mead Whitaker, Esq.,
attorneys for Defendant-Appellee in this action, at the U.S. Department
of Justice and Internal Revenue Service, 1111 Constitution Avenue, NW,
Washington, D.C., respectively, the address designated by said attorneys
for that purpose by depositing a true copy of same enclosed in a post-
paid properly addressed wrapper, in a post office depository under the
exclusive care and custody of the United States Postal Service within
the State of Connecticut.


Beverlee Jean Goynes

SWORN TO before me
this 17th day of December, 1976.


S. David Leibowitt,
Commissioner of the Superior
Court.